

SUBCHAPTER 5. EXPEDITED COMPLIANCE OPTIONS

7:26B-5.1 Expedited review

(a) An owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for an expedited review in accordance with (c) below.

(b) The Department's approval of an expedited review application authorizes the owner or operator of an industrial establishment that was previously remediated to close operations or transfer ownership or operations of the industrial establishment without further remediation when there has been no discharge subsequent to the last remediation or a subsequent discharge occurred and the subsequent discharge has been remediated and approved by the Department.

(c) To apply for an expedited review, the owner or operator shall submit a completed expedited review application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;
2. A certification by the owner or operator that:
 - i. A remedial action workplan or equivalent plan, has previously been implemented and the Department has issued a no further action letter or equivalent approval for the industrial establishment;
 - ii. The Department has approved a negative declaration for the industrial establishment; or

iii. The Department or the United States Environmental Protection Agency has approved an equivalent remediation of the industrial establishment pursuant to ISRA, the Spill Compensation and Control Act, N.J.S.A. 58:10- 23.11a et seq., Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. or any other applicable State or Federal law;

3. A certification by the owner or operator that:

i. The owner or operator has completed a preliminary assessment report and site investigation report, as applicable, at the industrial establishment in accordance with N.J.A.C. 7:26E, to identify areas of concern that are new or have continued in use since the issuance of a no further action letter, negative declaration approval, or equivalent remediation approval; and

(1) Based on the preliminary assessment report and site investigation report referenced in (c)3i above, there has been no discharge of a hazardous substance or hazardous waste at the industrial establishment, subsequent to the issuance of the no further action letter or the equivalent approval; or

(2) Based on the preliminary assessment report and site investigation report referenced in (c)3i above, a discharge of a hazardous substance or hazardous waste at the industrial establishment has occurred subsequent to the issuance of the no further action letter, or the equivalent approval. The owner or operator shall identify the discharge(s), describe the action taken to remediate the discharge(s) and demonstrate that the remediation was approved by the Department;

4. A certification by the owner or operator of the industrial establishment, that for any underground storage tank system which is covered by the provisions of N.J.S.A. 58:10A-21 et seq., and N.J.A.C. 7:14B, the owner or operator is in compliance with the provisions of N.J.S.A. 58:10A-21 et seq., and N.J.A.C. 7:14B;

5. A copy of the most recent no further action letter, or other equivalent approval, as applicable, for the entire industrial establishment and/or a copy of the document evidencing the Department's approval as referenced in (a)3i(2) above;

6. A completed negative declaration in accordance with N.J.A.C. 7:26B-6.6;

7. Any additional information required by the Department from a specific owner or operator; and

8. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1.

(d) The Department shall review the expedited review application in accordance with N.J.A.C. 7:26B-1.7, and may perform a site inspection or require the owner or operator to submit the preliminary assessment report and/or site investigation report, if necessary. The owner or operator is not required to submit the preliminary assessment report and site investigation report unless the Department requests the submission of the reports in writing. The Department shall approve the expedited review application by the issuance of a no further action letter pursuant to N.J.A.C. 7:26B-1.8(a) or disapprove the expedited review application and require the owner or operator to remediate the industrial establishment in accordance with ISRA, this chapter and N.J.A.C.

7:26B-5.2 Area of concern review

(a) The owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for an area of concern review in accordance with

(c) below, for any area(s) of concern at the industrial establishment for which a remediation has previously been conducted and approved by the Department.

(b) The Department's approval of an area of concern review application relieves the owner or operator from remediating each area of concern at the industrial establishment that was previously remediated and where there has not been any subsequent discharges at that area of concern.

(c) To apply for an area of concern review, the owner or operator shall submit a completed area of concern review application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B- 1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;

2. A site map which identifies the area(s) of concern which is/are the subject of this area of concern review;

3. A certification by the owner or operator that the Department or the United States Environmental Protection Agency has approved an equivalent remediation at an area of concern pursuant to ISRA, the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., or any other applicable State or Federal law;

4. A copy of the no further action letter or equivalent approval for that area of concern;

5. A certification by the owner or operator that:

i. The owner or operator has completed a preliminary assessment report and site investigation report in accordance with N.J.A.C. 7:26E, as applicable, at each area of concern identified at (c)1 above; and

(1) Based on the preliminary assessment report and site investigation report referenced in (c)5i above, there has been no discharge of a hazardous substance or hazardous waste at each subject area of concern subsequent to the issuance of the no further action letter or equivalent approval; or

(2) Based on the preliminary assessment report and site investigation report referenced in (c)5i above, a discharge of a hazardous substance or hazardous waste occurred at each subject area of concern subsequent to the issuance of the no further action letter or equivalent approval; and

6. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1.

(d) The Department shall review the area of concern review application in accordance with N.J.A.C. 7:26B-1.7, and may perform a site inspection or require the owner or operator to submit the preliminary assessment report and/or site investigation report, if necessary. The Department shall either approve the application by the issuance of a no further action letter for each area of concern identified at (c)1 above pursuant to N.J.A.C. 7:26B-1.8, or disapprove the application and require the owner or operator to remediate all areas of concern identified in (c)1 above, in accordance with ISRA and this chapter and N.J.A.C. 7:26E.

7:26B-5.3 Regulated underground storage tank waiver

(a) The owner or operator may, upon submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for a regulated underground storage tank waiver in accordance with (c) below.

(b) The Department's approval of a regulated underground storage tank waiver application authorizes the owner or operator to close operations or transfer ownership or operations of an industrial establishment prior to obtaining approval of a remedial action workplan or a negative declaration or without the approval of a remediation agreement if the only areas of concern or the only discharges at the industrial establishment are from an underground storage tank or tanks regulated pursuant to N.J.S.A. 58:10A-21 et seq. and N.J.A.C. 7:14B.

(c) To apply for a regulated underground storage tank waiver, the owner or operator shall submit a completed regulated underground storage tank waiver application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department, at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;

2. A preliminary assessment report that demonstrates that the only area of concern at the industrial establishment is an underground storage tank or tanks as defined pursuant to N.J.S.A. 58:10A-22 and N.J.A.C. 7:14B or a preliminary assessment and site investigation report which demonstrates that the only discharged hazardous substances or hazardous wastes at the industrial establishment or that has migrated offsite, above the applicable remediation standards, are from a discharge from that underground storage tank or tanks;

3. A certification by the owner or operator of the industrial establishment that the owner or operator is in compliance, pursuant to N.J.A.C. 7:26B-5.3(d), with the provisions of N.J.S.A. 58:10A-21 et seq. and N.J.A.C. 7:14B for all underground storage tanks at the industrial establishment that are covered by that act; and

4. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1.

(d) The owner or operator shall be deemed in compliance with the provisions of N.J.S.A. 58:10A-21 et seq. and N.J.A.C. 7:14B as it relates to the subject discharge of a hazardous substance or hazardous waste from an underground storage tank, if the owner or operator has been issued an order by, or has entered into an agreement with the Department to remediate that discharge and the owner or operator is in compliance with that order or agreement.

(e) The Department shall review the regulated underground storage tank waiver application in accordance with N.J.A.C. 7:26B-1.7, and shall either approve the application by the issuance of an authorization letter pursuant to N.J.A.C. 7:26B- 1.8(c) or disapprove the application and require the owner or operator of the industrial establishment to remediate the industrial establishment in accordance with ISRA, this chapter and N.J.A.C. 7:26E.

7:26B-5.4 Remediation in progress waiver

(a) The owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for a remediation in progress waiver in accordance with (c) below.

(b) The Department's approval of a remediation in progress waiver application authorizes the owner or operator to close operations or transfer ownership or operations of the industrial establishment prior to obtaining approval from the Department of a remedial action workplan, a negative declaration and without the approval of a remediation agreement.

(c) To apply for a remediation in progress waiver, the owner or operator shall submit a completed remediation in progress waiver application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;

2. Evidence that establishes that the industrial establishment is already in the process of a remediation pursuant to ISRA, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., or other applicable state laws and regulations, or the industrial establishment is currently in the process of an equivalent remediation pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. or any other applicable Federal law;

3. A certification by the owner or operator which includes the following:

- i. The owner or operator has completed a preliminary assessment report and site investigation report, as applicable, to identify areas of concern in accordance with N.J.A.C. 7:26E and based on the preliminary assessment report and site investigation report:

- (1) There has been no discharge of any hazardous substance or hazardous waste during the owner's or operator's period of ownership or operation;

(2) A discharge of a hazardous substance or hazardous waste occurred during the owner's or operator's period of ownership or operation and the Department approved the remediation;

4. A certification by the owner or operator that any transferee of the industrial establishment has been notified that the industrial establishment is the subject of a remediation;

5. A certification by the owner or operator that:

i. A remediation funding source for the cost of the remediation at the industrial establishment has been established as required pursuant to N.J.A.C. 7:26C-7; or

ii. A financial assurance was established prior to June 16, 1993 and the amount of the financial assurance is consistent with the current cost estimate developed in accordance with N.J.A.C. 7:26E, for the remediation or the implementation of the remedial action workplan at the industrial establishment; and

6. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1.

(d) The Department shall review the application in accordance with N.J.A.C. 7:26B-1.7 and may perform a site inspection or require the owner or operator to submit the preliminary assessment report and/or site investigation report, if necessary. The owner or operator is not required to submit the preliminary assessment report and site investigation report unless the Department requests the submission of the reports in writing. The Department shall either approve the remediation in progress waiver application by the issuance of an authorization letter pursuant to N.J.A.C. 7:26B-1.8(c) or disapprove the application and require the owner or operator to remediate the industrial establishment in accordance with ISRA, this chapter and N.J.A.C. 7:26E.

7:26B-5.5 Limited site review

(a) The owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for a limited site review in accordance with (c) below.

(b) The Department's approval of a limited site review application authorizes the owner or operator to remediate only those area(s) of concern at an industrial establishment where a discharge, subsequent to a prior remediation, has occurred.

(c) To apply for a limited site review, the owner or operator shall submit a completed limited site review application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;

2. A certification by the owner or operator that:

- i. A remedial action has been previously implemented and the Department has issued a no further action letter;

- ii. The Department has approved a negative declaration; or

- iii. The Department or the United States Environmental Protection Agency has previously approved an equivalent remediation of the industrial establishment pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. or any other applicable law;

3. A certification by the owner or operator of the industrial establishment that the owner or operator has completed a preliminary assessment report and site investigation report, as applicable, at the industrial establishment in accordance with N.J.A.C. 7:26E, and that no other discharge of a hazardous substance or hazardous waste, that was not identified in (c)3i or ii below, has occurred at the industrial establishment; and

i. Based on the preliminary assessment report and site investigation report, a discharge has occurred at the industrial establishment subsequent to the issuance of the no further action letter or equivalent approval, and was not remediated in accordance with the procedures established by the Department; or

ii. Based on the preliminary assessment report and site investigation report, a discharge has occurred at the industrial establishment subsequent to the issuance of the no further action letter or equivalent approval and that any remediation performed by the owner or operator has not been approved by the Department; and

4. A certification by the owner or operator of the industrial establishment, that for any underground storage tank which is covered by the provisions of N.J.S.A. 58:10A-21 et seq., and N.J.A.C. 7:14B, the owner or operator is in compliance with the provisions of N.J.S.A. 58:10A-21 et seq., and N.J.A.C. 7:14B;

5. A copy of the most recent negative declaration, no further action letter, or other approval, as applicable, issued by the Department or federal agency for the industrial establishment;

6. A completed negative declaration in accordance with N.J.A.C. 7:26B-6.6, if applicable; and

7. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1.

(d) The Department shall review the limited site review application in accordance with N.J.A.C. 7:26B-1.7, and may perform a site inspection or require the owner or operator to submit the preliminary assessment report and/or site investigation report, if necessary. The owner or operator is not required to submit the preliminary assessment report and site investigation report unless the Department requests the submission of the reports in writing.

(e) The Department shall either approve or disapprove a limited site review application by the following actions:

1. Approve the limit site review application by the issuance of a no further action letter pursuant to N.J.A.C. 7:26B-1.8(a);

2. Approve the limited site review application and require the owner or operator of the industrial establishment to remediate each area of concern identified in (c)3 above, in accordance with ISRA and this chapter; or

3. Disapprove the limited site review application and require the owner or operator of the industrial establishment to remediate the industrial establishment in accordance with ISRA, this chapter and N.J.A.C. 7:26E.

7:26B-5.6 Minimal environmental concern review

(a) The owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for a determination that a discharge at an industrial establishment is a minimal environmental concern in accordance with (c) below.

(b) The Department's approval of a minimal environmental concern application authorizes the owner or operator to close operations or transfer ownership or operations at an industrial establishment prior to obtaining approval of a remedial action workplan or without the approval of a remediation agreement by the Department. This section shall not be construed to

allow an owner or operator to implement a remedial action involving the remediation of groundwater or surface water prior to the Department's approval of a remedial action workplan for the site.

(c) To apply for a minimal environmental concern determination, the owner or operator shall submit a completed minimal environmental concern application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;
2. A preliminary assessment report, site investigation report and remedial investigation report for the industrial establishment;
3. A certification by the owner or operator that based on the remediation completed, there are no more than two areas of concern at the industrial establishment that are contaminated at levels above the applicable remediation standards and the remedial action at those areas of concern can be completed pursuant to N.J.A.C. 7:26E and the applicable remediation standards within six months after the owner's or operator's receipt of the approval of the application by the Department;
4. Documentation establishing that the discharged hazardous substances or hazardous wastes at the industrial establishment do not pose an immediate threat to human health because of the proximity of an area of concern to a drinking water source or because of the location, complexity, or the nature of the discharge;
5. A certification by the owner or operator that a remedial action workplan shall be prepared pursuant to standards and criteria established by the Department at N.J.A.C.

7:26E and the remediation shall meet either the restricted use or unrestricted use soil remediation standards and the applicable surface water and groundwater remediation standards;

6. A certification, by the owner or operator that the remedial action workplan will be prepared, implemented and completed pursuant to standards and criteria established by the Department at N.J.A.C. 7:26E within six months after the owner's or operator's receipt of the approval of the application by the Department;

7. Evidence that a remediation funding source has been established in accordance with N.J.A.C. 7:26C-7; and

8. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1.

(d) The Department shall review the minimal environmental concern application in accordance with N.J.A.C. 7:26B-1.7 and may perform a site inspection of the industrial establishment, if necessary.

(e) Within 30 calendar days after the receipt of a complete application the Department shall either approve the minimal environmental concern application by the issuance of an authorization letter or disapprove the application and require the owner or operator to remediate the industrial establishment pursuant to ISRA and this chapter.

(f) Within six months after receipt of the Department's approval of the minimal environmental concern application, the owner or operator shall implement the remedial action at the industrial establishment and submit the remedial action report to the Department.

(g) The owner or operator shall notify the Department, in writing, at the address provided at N.J.A.C. 7:26B-1.5 prior to the expiration of the schedule established in (f) above, that the owner or operator can not implement the remedial action at the industrial establishment and

submit the remedial action report to the Department. The owner or operator shall have no more than 120 calendar days in addition to the schedule established in (f) above, to implement the requirements of the remedial action and submit the remedial action report required by (f) above.

(h) The Department shall review the remedial action report above in accordance with N.J.A.C. 7:26B-1.7 and may perform a site inspection of the industrial establishment or at any area offsite.

(i) The Department shall either approve or disapprove the remediation of the industrial establishment and notify the owner or operator of its determination within 45 calendar days after receipt of the remedial action report. The Department shall approve the remediation by the issuance of a no further action letter in accordance with N.J.A.C. 7:26B-1.8(a), or may disapprove the remediation and require the owner or operator remediate the industrial establishment in accordance with ISRA, this chapter and N.J.A.C. 7:26E.

(j) The Department may rescind its determination that the industrial establishment is a minimal environmental concern and rescind any letters issued pursuant to (e) above upon the failure of an owner or operator of the industrial establishment to implement the requirements of a remedial action workplan within the additional time provided (g) above, and require that a new remedial action workplan be submitted and implemented by the owner or operator in accordance with ISRA, this chapter and N.J.A.C. 7:26E.

7:26B-5.7 Limited conveyance

(a) The owner of an industrial establishment may, upon submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for a certificate of limited conveyance in accordance with (c) below.

(b) The Department's approval of a certificate of limited conveyance authorizes the owner of an industrial establishment to transfer a portion of an industrial establishment upon the Department's issuance of a no further action letter or approval of a remedial action workplan or

remediation agreement for the subject portion of the industrial establishment without the owner or operator conducting a remediation of the entire industrial establishment. The certificate of limited conveyance shall be valid for three years from the date of issuance.

(c) To apply for a certificate of limited conveyance, the owner or operator shall submit a completed limited conveyance application, certified in accordance with N.J.A.C. 7:26B-1.6; to the Department at the address provided at N.J.A.C. 7:26B- 1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;
2. A site map of the industrial establishment that identifies the real property on which the industrial establishment is situated, and the portion of the real property subject to the proposed transfer and any areas conveyed pursuant to a prior certificate of limited conveyance;
3. A description of the real property to be transferred;
4. An appraisal of the entire industrial establishment, an appraisal of the real property to be transferred and an appraisal of the remaining real property if the certificate of limited conveyance were issued. The appraisals required by this section shall not be made more than one year prior to the submission of the application for a certificate of limited conveyance and shall be conducted by a designated Member, Appraisal Institute (American Institute of Real Estate Appraisers), Senior Real Estate Analyst (Society of Real Estate Appraisers), or Senior Member (American Society of Appraisers);
5. The sale price or fair market value of the real property to be transferred;

6. Any additional information the Department requests from a specific owner or operator;

7. Copies of all prior certificate(s) of limited conveyance if any, issued for the subject industrial establishment;

8. A copy of the sales agreement specifying the agreed upon price for the real property presently proposed for conveyance or, in the case of an acquisition by a condemning authority where no agreement has been reached, an affidavit from the owner specifying the compensation, including any damages, sought by the owner and the current appraised value; and

9. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1.

(d) The Department shall review the information submitted pursuant to (c) above in accordance with N.J.A.C. 7:26B-1.7 and shall issue a certificate of limited conveyance for the real property on which an industrial establishment is situated after the Department deems the following criteria to be satisfied:

1. The sale price or fair market value of the real property to be conveyed, together with any additional diminution in value of the remaining property as a result of this transfer, is not more than one-third of the total appraised value of the real property of the industrial establishment prior to the transfer;

2. The remaining real property is an industrial establishment subject to the provisions of this chapter; and

3. Transfers or conveyances made pursuant to this section shall not exceed one-third of the value of the industrial establishment during the period of ownership of the applicant.

(e) Upon the Department's issuance of the certificate of limited conveyance, the owner or operator shall remediate the portion of the real property certified for transfer or conveyance prior to the transfer or conveyance. The remediation of the real property subject to the certificate of limited conveyance shall include any discharges from the remaining portion of the industrial establishment that have migrated or are migrating to the real property certified for conveyance.

(f) Upon the Department's disapproval of the limited conveyance application, the owner or operator shall remediate the industrial establishment in accordance with ISRA and this chapter

(g) The owner or operator shall remediate the remaining portion of the industrial establishment, or otherwise comply with this chapter, upon the subsequent closing of operations or transferring of ownership or operations of the industrial establishment.

(h) An owner may, concurrent with or subsequent to a transfer or conveyance executed pursuant to this section, transfer additional portions of the industrial establishment in excess of the permissible conveyance limitation provided at (d)3 above, if the proposed transfer does not constitute a closing of operations or transfer of ownership or operations of an industrial establishment as defined at N.J.A.C. 7:26B-1.4.

(i) An owner who transfers additional portions pursuant to (h) above shall use the funds paid for those additional portions exclusively for remediating the additional portion(s) transferred pursuant to (h) above. The owner shall deposit any portion of the amount paid that remains unexpended in a remediation trust fund that shall be established pursuant to N.J.A.C. 7:26C-7 and N.J.S.A. 13:1K- 11.8(g).

(j) Nothing in this section shall be construed to allow an owner to transfer any of the real property of an industrial establishment without complying with ISRA and this chapter for those portions subject to the transfer.

7:26B-5.8 Remedial action workplan deferral

(a) The owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for a remedial action workplan deferral in accordance with (c) below.

(b) The Department's approval of a remedial action workplan deferral application authorizes the owner or operator to transfer ownership or operations of the industrial establishment without the preparation, approval and implementation of a remedial action workplan for the industrial establishment.

(c) To apply for a remedial action workplan deferral, the owner or operator shall submit a completed remedial action workplan deferral application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following information:

1. A certification signed by the purchaser, transferee, mortgagee or other party to the transfer that the industrial establishment would be subject to substantially the same use by the purchaser, transferee, mortgagee or other party to the transfer as established by the following criteria:

i. Substantially the same use means that the industrial establishment shall retain the same three digit industry group number, as designated in the NAICS Manual; or

ii. An owner or operator may submit a written request to the Department at the address provided at N.J.A.C. 7:26B-1.5, for a determination that the industrial establishment be deemed subject to substantially the same use based upon its retention of the same three digit subsector number, as designated in the NAICS Manual. The owner or operator shall include the following information: the industrial establishment's current six digit NAICS number, a description of the current operations of the industrial establishment, the proposed six digit NAICS

number for the industrial establishment after the proposed transfer and a description of the proposed operations at the industrial establishment after the proposed transfer;

2. The completed preliminary assessment report, site investigation report, and remedial investigation report for the industrial establishment;

3. A cost estimate for the remedial action necessary at the industrial establishment based upon the information collected in the preliminary assessment report, site investigation report, and remedial investigation report and developed in accordance with N.J.A.C. 7:26E;

4. A certification signed by the purchaser, transferee, mortgagee or other party to the transfer that the purchaser, transferee, mortgagee or other party to the transfer has reviewed preliminary assessment report, site investigation report, and remedial investigation report and the cost estimate for the remedial action necessary at the industrial establishment and that the purchaser, transferee, mortgagee or other party to the transfer has the financial ability to pay for the implementation of the necessary remedial action; and

5. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1.

(d) The Department shall review the remedial action workplan deferral application in accordance with N.J.A.C. 7:26B-1.7. The Department shall either approve the remedial action workplan deferral by the issuance of an authorization letter pursuant to N.J.A.C. 7:26B-1.8(c) or disapprove the application and require the owner or operator to submit a remedial action workplan for the industrial establishment.

(e) Upon approval of the deferral application by the Department, the preparation, approval, and implementation of a remedial action workplan for the industrial establishment may

be deferred for that transfer provided in the notice required by (a) above, until the use changes or until the purchaser, transferee, mortgagee or other party to the transfer closes operations.

(f) The Department's approval of the remedial action workplan deferral application shall not be construed as an approval by the Department of any workplans and or reports submitted in accordance with (c)3 above.